Filed 2/17/05 Rudy S. v. Sup. Ct. CA2/4

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

RUDY S.,

Petitioner,

v.

THE SUPERIOR COURT OF LOS ANGELES COUNTY,

Respondent;

LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES et al.,

Real Parties in Interest.

No. B179595

(Los Angeles County Super. Ct. No. CK54501)

ORIGINAL PROCEEDING in mandate. David Doi, Judge. Writ denied.

Rudy S., in pro. per., for Petitioner.

No appearance for Respondent.

Raymond Fortner, Jr., County Counsel, Larry Cory, Assistant County Counsel, and Jacklyn K. Louie, Deputy County Counsel, for Real Party in Interest Los Angeles County Department of Children and Family Services.

Law Offices of Kenneth P. Sherman and Naomi R. Cohen for Real Party in Interest Minor Joy S.

INTRODUCTION

Following a review hearing conducted pursuant to Welfare and Institutions Code section 366.21, subdivisions (e),[1] the juvenile court ordered that a hearing be held on March 8, 2005, pursuant to section 366.26, to develop a permanent plan for the dependent minor Joy S. The father, Rudy S., petitions for a writ of mandate to compel the juvenile court to vacate its orders, contending he should have been granted six more months of reunification services. Review by extraordinary writ is the remedy provided in section 366.26, subdivision (*l*) and rule 39.1B, California Rules of Court. Real party in interest the Los Angeles County Department of Children and Family Services (DCFS) filed an answer to the petition, in which real party in interest the minor joined. We deny the petition.

FACTUAL AND PROCEDURAL BACKGROUND

Joy S., born in January 2004, came to the attention of DCFS when she was born with a positive toxicology screen for amphetamines. A section 300 petition

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[1] All further statutory references are to the Welfare and Institutions Code.

was filed on February 3, 2004, alleging that Father and the child's mother[2] had histories of abusing drugs and were unable to adequately care for Joy. Joy was placed in foster care.

At the detention hearing on February 3, 2004, the juvenile court ordered that Joy be detained, and ordered the parents to attend parenting classes and enroll in a drug rehabilitation program with random drug testing. The parents were granted monitored visits a minimum of three times per week.

In a pretrial resolution conference report dated February 24, 2004, DCFS reported that Father admitted using drugs on January 25, 2004, but said he had not used drugs before and that he had done so because he was overwhelmed by Joy being removed from Mother. He said he had not known Mother was using drugs. The parents were visiting Joy on a consistent basis.

Mother had been a dependent of the juvenile court. Her former foster mother reported to DCFS that Mother and Father used drugs together, that Father provided Mother with drugs, and that Mother had a serious drug problem.

At the hearing on February 24, 2004, the court sustained the section 300 petition as amended, removed Joy from the parents' custody, and ordered her suitably placed. The parents were granted reunification services, and the court ordered Father to attend drug rehabilitation with random testing and parenting education classes. He was granted monitored visits.

DCFS reported in September 2004 that Father enrolled in an outpatient drug treatment program in June. Father's drug counselor reported that he was attending regularly, but had tested positive for marijuana on July 12, 2004. On March 11,

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[2] The child's mother, Kristina R., did not file a petition for extraordinary writ as to the termination of reunification services and setting a section 366.26 hearing.

2004, he tested positive for cannabinoids. He was visiting Joy, usually three times per week. On a few occasions, he fell asleep after the first hour while holding Joy.

DCFS submitted on September 15, 2004, a report that Father had been terminated from his drug treatment program on August 30, 2004, for failure to appear at group treatment since August 12, 2004; he missed an individual session on August 16, 2004. He had not drug tested, and had not enrolled in parenting classes.

A contested section 366.21, subdivision (e), six-month review hearing was set for October 6, 2004. DCFS reported on that date that neither parent had complied with the case plan requiring enrollment in drug treatment with random testing, and in parenting education. They visited Joy once a week, but she did not appear to be bonded to them.

The contested section 366.21, subdivision (e) hearing was continued to November 9, 2004. At the hearing on that date, the social worker indicated that Father said he was on a waiting list for an inpatient drug treatment program, but the social worker was unable to verify that information. He had not submitted to weekly drug tests through DCFS as he was required to do. He had continued to visit with Joy.

The court found that Father had been provided with reasonable reunification services, and that there was no substantial probability that Joy would be safely returned to either parent within six months. Based on the lack of compliance with the case plan by either parent, the court terminated reunification services.

Father then filed, in propria persona, the petition for extraordinary writ now before us.

DISCUSSION

Attached to Father's petition is a letter from American Recovery Center, dated November 16, 2004, stating Father entered treatment on November 5, 2004. As part of the program, Father would be subjected to random drug tests. His expected date of discharge is May 5, 2005.

The petition now before us was filed by Father in propria persona. The form petition is not accompanied by a memorandum of points and authorities in support of the request for relief. It merely states that Father is attempting to complete a treatment program, and needs time to complete the program and incorporate the necessary requirements placed on him by DCFS in order to obtain custody of Joy.

DCFS filed a motion to dismiss the matter based on the deficiencies in the writ petition. While we agree the petition is woefully inadequate, we declined to dismiss the matter given the importance of Father's right to review at this crucial stage of the proceedings.

We find troubling the lack of input from counsel for Father. Counsel is obviously aware of his duty not to file a petition that counsel feels is without merit. Nonetheless, counsel should not remain silent, leaving us to wonder whether in fact Father is still represented by counsel. If trial counsel does not believe in good faith that an argument for reversal can be made, that attorney should serve the equivalent of a *Sade C.* brief upon this court and real parties in interest, informing us that counsel does not feel a petition should be filed, but the parent wishes to proceed with the petition in propria persona. (*In re Sade C.* (1996) 13 Cal.4th 952.)

We now consider the merits of the petition before us.

We understand Father's contention to be that the juvenile court should have extended the period of reunification services for another six months.[3] Applicable here, section 366.21, subdivision (e), states in relevant part: "If the child was under the age of three years on the date of the initial removal . . . , and the court finds by clear and convincing evidence that the parent failed to participate regularly and make substantive progress in a court-ordered treatment plan, the court may schedule a hearing pursuant to Section 366.26 within 120 days. If, however, the court finds there is a substantial probability that the child, who was under the age of three years on the date of initial removal . . . , may be returned to his or her parent or legal guardian within six months or that reasonable services have not been provided, the court shall continue the case to the 12-month permanency hearing."

Also applicable is section 361.5. It provides: "(a) . . . Child welfare services, when provided, shall be provided as follows: [¶] . . . [¶] (2) For a child who, on the date of initial removal from the physical custody of his or her parent or guardian, was under the age of three years, court-ordered services *shall not exceed a period of six months* from the date the child entered foster care. [¶] . . . [¶] Notwithstanding paragraphs (1), (2), and (3), court-ordered services may be extended up to a maximum time period not to exceed 18 months after the date the child was originally removed from physical custody of his or her parent or guardian if it can be shown, at the hearing held pursuant to subdivision (f) of Section 366.21, that the permanent plan for the child is that he or she will be returned and safely maintained in the home within the extended time period. *The court shall extend the time period only if it finds that there is a substantial*

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[3] Father does not suggest that the reunification services provided to him were not reasonable.

probability that the child will be returned to the physical custody of his or her parent or guardian within the extended time period or that reasonable services have not been provided to the parent or guardian." (Italics added.)

Father had ample time to comply with the case plan, but failed to do so. The hearing at which reunification services were terminated occurred 10 months after Joy was placed in foster care. Based on Father's failure to make substantive progress in the court-ordered treatment plan, the court could not find that there is a substantial probability that Joy may be returned to Father within six months, such that continuation of services would be appropriate.

Even if Father successfully completes the drug program in May 2005 which he apparently started in November 2004, the record is devoid of any evidence to support the notion that reunification would be likely to occur. He has not enrolled in parenting classes as required by the case plan, or even demonstrated that he has attempted to do so. Under these circumstances, we will not interfere with the juvenile court's determination that reunification services should be terminated.

DISPOSITION

The petition for writ of mandate is denied.

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CURRY, J.

We concur:

HASTINGS, Acting P.J.

GRIMES, J.*

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* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.